

Daniel C. Higgins, Esq.  
November 5, 2013  
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pre-filing conference with FCC staff,<sup>2</sup> at which the parties must be prepared to discuss, among other issues, "the status of interconnection negotiations, including any unresolved issues" and procedures and a procedural schedule for arbitration.<sup>3</sup> Accordingly, I write to request that Star respond to TWC's previously provided ICA template,<sup>4</sup> which I attach hereto for your convenience, and identify any provisions that you would propose to modify or expect to dispute. More broadly, we believe that it would be fruitful for the parties to discuss TWC's template in advance of the pre-filing conference with the goal of reducing the burdens associated with the impending arbitration, or even eliminating the need for an arbitration altogether.

Notably, TWC's ICA template relies in large part on a form of ICA developed by John Staurulakis, Inc. for use by incumbent LECs, and thus includes terms and conditions that are commonplace in the industry. We expect that few, if any, of the specific terms we have proposed would impose material burdens on Star, but we are prepared to consider any reasonable alternative provisions that Star seeks to include in the ICA.

In light of TWC's obligation to coordinate the scheduling of the joint pre-filing conference, TWC requests that Star provide a response to the ICA template within seven days of receipt of this letter. In the meantime, I will reach out to you separately to discuss dates for the joint pre-filing conference. In the event that Star fails to provide a response, TWC intends to contact FCC staff on Wednesday, November 13, 2013 to schedule the conference.

Please do not hesitate to contact me should you have any questions.

With best regards,

Sincerely,



Marcus W. Trathen

Enclosure

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<sup>2</sup> *Id.* ¶ 26 & n.103.

<sup>3</sup> *Procedures Established for Arbitration of Interconnection Agreements Between Verizon and AT&T, Cox, and Worldcom*, Public Notice, 16 FCC Rcd 3957, 3958 (2001).

<sup>4</sup> See TWC Response to Data Request 1, Docket No. TMC-5, Sub 1 (filed June 4, 2013).

**DRAFT**

**INTERCONNECTION AGREEMENT**

**BETWEEN**

---

**AND**

**TIME WARNER CABLE INFORMATION SERVICES (\_\_\_\_), LLC**

**[DATE]\_\_\_\_\_**

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## INTERCONNECTION AGREEMENT

THIS INTERCONNECTION AGREEMENT ("*Agreement*"), is made effective upon signature by both Time Warner Cable Information Services (\_\_\_\_\_), LLC ("*CLEC*") with offices at 60 Columbus Circle, New York, New York 10023, and \_\_\_\_\_ ("*ILEC*"), \_\_\_\_\_. This Agreement may refer to either ILEC or CLEC or both as a "*Party*" or "*Parties*."

WHEREAS, ILEC is an Incumbent Local Exchange Carrier authorized to provide Telecommunications Services in various exchanges in the State of \_\_\_\_\_ (the "*ILEC's Service Territory*"); and

WHEREAS, CLEC is or seeks to become a Competitive Local Exchange Carrier authorized to provide Telecommunications Services in the ILEC's Service Territory; and

WHEREAS, the Parties wish to interconnect their facilities and exchange Telecommunications Traffic to fulfill their obligations pursuant to Sections 251(a) and (b) of the Act and for the purpose of transporting and terminating such Telecommunications Traffic.

NOW THEREFORE, in consideration of the mutual agreements contained herein, ILEC and CLEC agree as follows:

### 1. **Effective Date, Term & Termination.**

- 1.1 Effective Date. This Agreement shall be deemed effective on the date stated in the first paragraph of this Agreement (the "*Effective Date*").
- 1.2 Term. This Agreement shall be effective as of the Effective Date and, unless cancelled or terminated earlier in accordance with the terms hereof, shall continue in effect until three (3) years after the Effective Date (the "*Initial Term*"). If neither Party elects to terminate this Agreement as of the date of termination of the Initial Term, this Agreement shall continue in force and effect on a month-to-month basis (each one-month period constituting a "*Follow-on Term*") unless and until cancelled or terminated as provided in this Agreement.
- 1.3 Notice of Termination. Either Party may terminate this Agreement effective upon the expiration of the Initial Term by providing written notice of termination ("*Notice of Termination*") at least ninety (90) calendar days in advance of the applicable date of termination. Either Party may terminate this Agreement effective upon the expiration of a Follow-on Term by providing a written Notice of Termination at least thirty (30) calendar days in advance of the applicable date of termination.
- 1.4 Effect on Termination of Negotiating Successor Agreement. If either Party provides notice of termination pursuant to Section 1.3 and, on or before the noticed date of termination, either Party has requested negotiation of a new interconnection agreement, this Agreement shall remain in effect until the earlier of: (a) the effective date of a new interconnection agreement between the Parties;

or, (b) the date 180 calendar days after the date of termination identified in the Notice of Termination, or (c) as may be mutually agreed by the Parties, unless an arbitration petition for a successor agreement has been filed by either Party, in which case (a) applies.

- 1.5 Termination Upon Sale. Notwithstanding anything to the contrary contained herein, a Party may terminate its obligations under this Agreement as to a specific operating area or portion thereof if such Party sells or otherwise transfers the area or portion thereof to a non-Affiliate. The selling or transferring Party shall provide the other Party with at least sixty (60) days prior written notice of such termination, which shall be effective on the date specified in the notice. Notwithstanding termination of this Agreement as to a specific operating area, this Agreement shall remain in full force and effect in the remaining operating areas.
- 1.6 Suspension or Termination Upon Default. Subject to either Party invoking its rights under Section 10, Dispute Resolution, either Party may suspend or terminate this Agreement, in whole or in part, in the event of a Default (defined below) by the other Party; provided, however, that the non-defaulting Party notifies the defaulting Party in writing of the Default and the defaulting Party does not cure the Default within sixty (60) calendar days of receipt of written notice thereof.
- 1.7 "Default" is defined to include:
- (a) A Party's insolvency or the initiation of bankruptcy or receivership proceedings by or against the Party, consistent with any order, decision, or other binding action taken by the bankruptcy court, or similar adjudicator of the Parties' rights in the event of receivership or bankruptcy; or
  - (b) The final revocation by the Commission of a Party's Certificate of Operating Authority or and transition of End-User Customers to another carrier; or
  - (c) A decision pursuant to the Formal Dispute Resolution provisions of Section 10, Dispute Resolution, that a Party has materially breached any of the terms or conditions hereof; or
  - (iv) Failure of a Party to pay undisputed amounts or to properly dispute unpaid amounts in accordance with Section 6.2, Billing and Payments/Disputed Amounts, subject to either Party invoking its rights under Section 10, Dispute Resolution.
- 1.8 Other Relief. Notwithstanding any other provision of Section 1.6 and except as may be prohibited by applicable federal law, either Party, as allowed by the Commission, may seek relief from the other Party's claims, assertions, actions or inaction in breach of this Agreement.



1.9 Liability Upon Termination. Termination of this Agreement, or any part hereof, for any cause shall not release either Party from any liability (i) which, at the time of termination, had already accrued to the other Party, (ii) which thereafter accrues in any respect through any act or omission occurring prior to the termination, or (iii) which accrues from an obligation that is expressly stated in this Agreement to survive termination.

**2. Contact Information.**

The Parties agree to exchange and to update contact and referral information for all purposes herein, including, but not limited to, order inquiry, number porting, trouble reporting, billing inquiries, and information required to comply with law enforcement and other security agencies of the government.

**3. Amendments.**

Any amendment, modification, or supplement to this Agreement must be in writing and signed by an authorized representative of each Party.

**4. Assignment.**

4.1 Neither Party may assign, subcontract, or otherwise transfer its rights or obligations under this Agreement except under such terms and conditions as are mutually acceptable to the other Party and with such Party's prior written consent, which consent shall not be unreasonably restricted, delayed or withheld. Notwithstanding anything to the contrary, a Party may assign, subcontract or otherwise transfer its rights or obligations under this Agreement upon notice to the other Party, but without needing the other Party's consent, to a subsidiary, Affiliate, or parent company, including any firm, corporation, or entity which the Party controls, is controlled by, or is under common control with, or has a majority interest in, or to any entity which succeeds to all or substantially all of its assets whether by merger, sale, or otherwise. Nothing in this Section is intended to impair the right of either Party to utilize subcontractors.

4.2 Neither Party shall assign this Agreement to any Affiliate or non-affiliated entity unless either (1) the assigning Party pays all undisputed bills, past due and current, under this Agreement, or (2) the assignee expressly assumes liability for payment of such bills.

**5. Authority.**

Each person whose signature appears on this Agreement represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement. Each Party represents that it has had the opportunity to consult with legal counsel of its choosing.

## 6. Billing and Payment.

6.1 In consideration of the services and facilities provided under this Agreement, each Party shall bill the other Party on a monthly basis all applicable charges as set forth in this Agreement. The Party billed ("**Billed Party**") shall pay to the invoicing Party ("**Billing Party**") all undisputed amounts within thirty (30) days from the bill date. If the payment due date is a Saturday, Sunday or a designated bank holiday, payment shall be made by the prior business day. Neither Party shall back-bill the other Party for services provided under this Agreement that are more than twelve (12) months old or that predate this Agreement. If a Party fails to bill for a service within twelve (12) months of when it was rendered, then that Party waives its rights to bill for that service, absent fraud or willful misconduct by the Billed Party.

6.1.1 Any amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1-1/2%) per month or (ii) the highest rate of interest that may be charged under Governing Law set forth in Section 15.

### 6.2 Billing Disputes

6.2.1 Neither Party shall dispute any amount billed by the Other Party (whether paid or unpaid) more than two (2) months from the date of the initial invoice for the charge to be disputed. If a Party fails to dispute a charge within two (2) months of the bill date of the initial invoice for that charge, then that Party waives its rights to dispute that charge (and /or payment of that charge), absent fraud or willful misconduct by the Billing Party. Within said two (2) month period the Billed Party shall give written notice to the Billing Party of the invoice involved and the amount it disputes (the "**Disputed Amount**"). Within three (3) months from the date of the initial invoice for that charge the Billed Party shall provide the specific details and reasons for disputing each item. The Billed-Paying Party shall pay when due all undisputed amounts to the Billing Party. The Parties will work together in good faith to resolve issues relating to any Disputed Amount.

6.2.2 If the dispute is resolved such that payment of some amount is required from the Billed Party, the Billed Party shall pay within sixty (60) days of the resolution of such dispute such required amounts with interest from the original due date at the rate specified in Section 6.1.1, above.

6.2.3 If the dispute is resolved such that both (i) payment of some or all of the Disputed Amount is not required, and (ii) the Billing Party is required to re-refund some amount to the Billed Party, the Billing Party will issue the Billed Party an appropriate credit on its next invoice following the date of resolution of the dispute, together with interest from the date payment was received at the rate specified in Section 6.1.1, above.



- 6.2.4 Any dispute concerning whether a Disputed Amount is due that the Parties cannot resolve by working together in good faith shall be resolved in accordance with all of the applicable procedures identified in the Dispute Resolution provisions set forth in Section 10 of this Agreement.

6.3 Consequences of Failure to Make Timely Payment

- 6.3.1 If any payment is not made when due, the Billing Party may send written notice (the "*Failure to Pay Notice*") to the Billed Party that provides the following:
- 6.3.1.1 notice that if payment is not made within fifteen (15) days of the date of this Failure to Pay Notice, the Billing Party will stop servicing all pending service orders from the Billed Party, will stop accepting new service orders from the Billed Party; and
  - 6.3.1.2 notice that if payment is not made within thirty (30) days of the date of this Failure to Pay Notice, the Billing Party will suspend all services provided under this Agreement; and
  - 6.3.1.3 notice that if payment is not made within forty-five (45) days of the date of this Failure to Pay Notice, the Billing Party will terminate this Agreement.
- 6.3.2 Following the sending of the Failure to Pay Notice, the Billing Party shall be free to take any or all of the above described actions if the full amount due is not paid prior to the expiration of the applicable period(s).
- 6.3.3 These consequences shall apply only to the non-payment of charges that are past due. Any unpaid charge that is disputed pursuant to Section 6.2, above, does not become past due, if at all, until expiration of the time period for payment following resolution of the dispute.

6.4 Audits

Either Party may conduct an audit of the other Party's billing data and invoices pertaining to the services provided under this Agreement, no more frequently than once per twelve (12) month period, to evaluate the other Party's accuracy of billing data and invoicing in accordance with this Agreement provided that the requested records do not exceed twelve (12) months in age from the date the monthly bill containing said record information was issued.

Any audit shall be performed as follows: (i) following at least thirty (30) days prior written notice to the audited Party; (ii) subject to the reasonable scheduling requirements and limitations of the audited Party and at single location designated by the audited Party; (iii) at the auditing Party's sole cost and expense; (iv) of a reasonable scope and duration; (v) in a manner so as not to interfere with the audited Party's business operations; and (vi) in compliance with the audited Party's security rules.

- 6.4.1 Adjustments, credits or payments shall be made and any corrective action shall commence within thirty (30) days from the requesting Party's receipt of the final audit report to compensate for any errors or omissions which are disclosed by such audit and are agreed to by the Parties.
- 6.4.2 Any disputes concerning audit results shall be referred to the Parties' designated representative(s) who have authority to settle the dispute. If these individuals cannot resolve the dispute within thirty (30) calendar days of the referral, the matter shall be resolved in accordance with the Dispute Resolution procedures set forth in Section 10 of this Agreement.
- 6.4.3 In addition to the audit rights in this Section 6, if either Party uses a third party to provide any services under this Agreement, including but not limited to 911 or directory listings, the Parties will cooperate with each other to obtain the necessary documentation to conduct an audit related to those services.

6.5 Recording

The Parties shall each perform traffic recording and identification functions necessary to provide the services contemplated hereunder. Each Party shall calculate terminating duration of minutes used based on standard Automatic Message Accounting ("*AMA*") records made within each Party's network; however, each Party may use alternative methods to record and/or validate terminating usage, such as SS7 traffic measurement and identification devices. The records shall contain the information to properly assess the jurisdiction of the call including ANI and service provider information necessary to identify the originating company and originating signaling information.

7. **Compliance with Laws and Regulations.**

Each Party shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement.

8. **Confidential/Proprietary Information.**

- 8.1 Any information such as specifications, drawings, sketches, business information, forecasts, models, samples, data, computer programs and other software and documentation of one Party (a Disclosing Party) that is furnished or made available or otherwise disclosed to the other Party or any of its employees, contractors, or agents (collectively the "*Receiving Party*") pursuant to this Agreement ("*Confidential/Proprietary Information*") shall be deemed the property of the Disclosing Party. Unless Confidential/Proprietary Information was previously known by the Receiving Party free of any obligation to keep it confidential, or has been or is subsequently made public by an act not attributable to the Receiving Party, or is explicitly agreed in writing not to be regarded as confidential, such information: (i) shall be held in confidence by each Receiving



Party; (ii) shall be disclosed to only those persons who have a need for it in connection with the provision of services required to fulfill this Agreement and shall be used by those persons only for such purposes; and (iii) may be used for other purposes only upon such terms and conditions as may be mutually agreed to in advance of such use in writing by the Parties. Notwithstanding the foregoing sentence, a Receiving Party shall be entitled to disclose or provide Confidential/Proprietary Information as required by any governmental authority or applicable law, upon advice of counsel, only in accordance with Section 8.2 of this Agreement. Nothing herein shall prohibit or restrict a Receiving Party from providing information requested by the FCC or a state regulatory agency with jurisdiction over this matter, or to support a request for arbitration, provided that, if the request or disclosure includes Confidential/Proprietary Information, the Disclosing Party is first given the opportunity to seek appropriate relief under the provisions of Section 8.2.

8.2 If any Receiving Party is required by any governmental authority, or by Applicable Law, to disclose any Confidential/Proprietary Information, or believes it is necessary to disclose Confidential/Proprietary Information pursuant to Section 8.1 above, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. The Disclosing Party may then seek appropriate protective relief from all or part of such requirement. The Receiving Party may disclose the Confidential/Proprietary Information within the time required by the governmental authority or Applicable Law provided that the Disclosing Party has been provided with written notice under this Section 8.2 and protective relief has not been obtained by the Disclosing Party. The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief that such Disclosing Party chooses to obtain.

8.3 In the event of the expiration or termination of this Agreement for any reason whatsoever, each Party shall return to the other Party or destroy all Confidential/Proprietary Information and other documents, work papers and other material (including all copies thereof) obtained from the other Party in connection with this Agreement and shall use all reasonable efforts, including instructing its employees and others who have had access to such information, to keep confidential and not to use any such information, unless such information is now, or is hereafter disclosed, through no act, omission or fault of such Party, in any manner making it available to the general public.

**9. Fraud.**

Neither Party shall bear responsibility for, nor be required to make adjustments to the other Party's account, in cases of fraud by the other Party's End-User Customers or on the other Party's End-User Customer accounts. The Parties agree to reasonably cooperate with each other to detect, investigate, and prevent fraud and to reasonably cooperate with law enforcement investigations concerning fraudulent use of the other Party's services or



network. The Parties' fraud minimization procedures are to be cost effective and implemented so as not to unduly burden or harm one Party as compared to the other.

## 10. Dispute Resolution.

- 10.1 Except as provided under Section 252 of the Act with respect to the approval of this Agreement by the Commission, the Parties desire to resolve disputes arising out of or relating to this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following dispute resolution procedures with respect to any controversy or claim arising out of or relating to this Agreement or its breach.
- 10.2 Informal Resolution of Disputes. At the written request of a Party, each Party will appoint a knowledgeable, responsible representative, empowered to resolve such dispute, to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The Parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Confidential/Proprietary Information developed for purposes of settlement, exempt from discovery, and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise discoverable, be discovered or otherwise admissible, be admitted in evidence, in the arbitration or lawsuit.
- 10.3 Formal Dispute Resolution. If negotiations pursuant to Section 10.2 fail to produce an agreeable resolution within sixty (60) days, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanisms; provided, that upon mutual agreement of the Parties such disputes may also be submitted to binding arbitration. In the case of arbitration, each Party shall bear its own costs. The Parties shall equally split the fees of any mutually agreed upon arbitration procedure and the associated arbitrator.
- 10.4 Continuous Service. The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure, and the Parties shall continue to perform their payment obligations (including making payments in accordance with Section 6) in accordance with this Agreement.

**11. Entire Agreement.**

This Agreement, together with all applicable attachments, exhibits, schedules, and addenda, constitutes the entire agreement of the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, discussions, proposals, and representations, whether written or oral, and all contemporaneous oral agreements, discussions, proposals, and representations concerning such subject matter. No representations, understandings, agreements, or warranties, expressed or implied have been made or relied upon in the making of this Agreement other than those specifically set forth herein. In the event there is a conflict between any terms of this Agreement, the provisions shall be construed to give the greatest possible effect to the intent of this Agreement.

**12. Expenses.**

Except as specifically set out in this Agreement, each Party shall be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.

**13. Force Majeure.**

Neither Party shall be liable for any delay or failure in performance of any part of this Agreement from any cause beyond its control and without its fault or negligence including, without limitation, acts of nature, acts of civil or military authority, government regulations, embargoes, epidemics, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, equipment failure, power blackouts, volcanic action, other major environmental disturbances, unusually severe weather conditions, inability to secure products or services of other persons or transportation facilities or acts or omissions of transportation carriers (collectively, a "*Force Majeure Event*"). If any Force Majeure Event occurs, the Party delayed or unable to perform shall give immediate notice to the other Party and shall take all reasonable steps to correct the condition resulting from the Force Majeure Event. During the pendency of the Force Majeure Event, the duties of the Parties under this Agreement affected by the Force Majeure Event shall be abated and shall resume immediately without liability thereafter.

**14. Good Faith Performance.**

In the performance of their obligations under this Agreement, the Parties shall act in good faith. In situations in which notice, consent, approval, or similar action by a Party is permitted or required by any provision of this Agreement, such action shall not be conditional, unreasonably withheld, or delayed.

**15. Governing Law.**

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of \_\_\_\_\_ and, when applicable, in accordance with the requirements of the Act and the FCC's implementing regulations.



**16. Headings.**

The headings in this Agreement are inserted for convenience and identification only and shall not be considered in the interpretation of this Agreement.

**17. Independent Contractor Relationship.**

Neither this Agreement, nor any actions taken by either Party in compliance with this Agreement, shall be deemed to create an agency or joint venture relationship between the Parties other than that of interconnecting carriers. Neither this Agreement, nor any actions taken by either Party in compliance with this Agreement, shall create a contractual, agency, or any other type of relationship or third party liability between either Party and the other Party's End-User Customers or other third parties.

**18. Law Enforcement Interface.**

18.1 With respect to requests for call content interception or call information interception directed at a Party's End-User Customer, the other Party will have no direct involvement in law enforcement interface. In the event a Party receives a law enforcement surveillance request for an End-User Customer of the other Party, the Party initially contacted shall direct the agency to the other Party.

18.2 Notwithstanding the preceding subparagraph, the Parties agree to work jointly in security matters to support law enforcement agency requirements for call content interception or call information interception.

**19. Liability and Indemnity.**

**19.1 DISCLAIMER**

EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, EACH PARTY MAKES NO REPRESENTATIONS OR WARRANTIES TO THE OTHER PARTY CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES OR FACILITIES IT PROVIDES UNDER THIS AGREEMENT. EACH PARTY DISCLAIMS, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

**19.2 Indemnification**

19.2.1 Each Party (the "*Indemnifying Party*") shall indemnify and hold harmless the other Party (the "*Indemnified Party*") from and against claims for loss, cost, liability, damage, and expense (including reasonable attorneys' fees) ("*Claims*") by End-User Customers of the Indemnifying Party and other third persons, for:



- 19.2.1.1 damage to tangible personal property or for personal injury proximately caused by the negligence, willful misconduct or intentional acts or omissions of the Indemnifying Party, its employees, agents or contractors; and
  - 19.2.1.2 libel, slander, infringement of copyright, or invasion of privacy arising from the content of communications transmitted over the Indemnified Party's facilities arising from the Indemnifying Party's facilities and originated by the Indemnifying Party or one of its End-User Customers; and
  - 19.2.1.3 claims for infringement of patents arising from combining the Indemnified Party's facilities or services with, or the using of the Indemnified Party's services or facilities in connection with, facilities of the Indemnifying Party.
- 19.2.2 A Party's indemnification obligations hereunder shall not be applicable to any Claims to the extent caused by, arising out of, or in connection with the negligence, willful misconduct or intentional acts or omissions of the Indemnified Party.
- 19.2.3 Notwithstanding this indemnification provision or any other provisions in the Agreement, neither Party, nor its parent, subsidiaries, affiliates, agents, servants, or employees, shall be liable to the other for Consequential Damages as defined in Section 19.3.3 of this Agreement.
- 19.2.4 The Indemnified Party will notify the Indemnifying Party promptly in writing of any Claims by End-User Customers or other third persons for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section, and will promptly assume the defense of such Claim.
- 19.2.4.1 In the event the Indemnifying Party does not promptly assume or diligently pursue the defense of the tendered action, then the Indemnified Party, after not less than ten (10) days prior notice to the Indemnifying Party, may proceed to defend or settle said action and the Indemnifying Party shall hold harmless the Indemnified Party from any loss, cost liability, damage and expense of such defense or settlement.
  - 19.2.4.2 The Indemnifying Party shall consult with the Indemnified Party prior to undertaking any compromise or settlement of any Claim(s), and the Indemnified Party will have the right, at its sole option and discretion, to refuse any such compromise or settlement that (in the Indemnified Party's sole reasonable opinion) might prejudice the rights of the Indemnified Party, and, at the Indemnified Party's sole cost and expense, to take

over the defense, compromise or settlement of such Claim(s); provided, however, that in such event the Indemnifying Party will neither be responsible for, nor will it be further obligated to indemnify the Indemnified Party from or against any Claims in excess of the amount of the refused compromise or settlement.

- 19.2.4.3 The Parties will cooperate in every reasonable manner with the defense or settlement of any claim, demand, or lawsuit.

### 19.3 Limitation of Liability

- 19.3.1 Except for a Party's indemnification obligations under Section 19.2, no liability shall attach to either Party, its parents, subsidiaries, affiliates, agents, servants, employees, officers, directors, or partners for damages arising from errors, mistakes, omissions, interruptions, or delays in the course of establishing, furnishing, rearranging, moving, terminating, changing, or providing or failing to provide services or facilities (including the obtaining or furnishing of information with respect thereof or with respect to users of the services or facilities) in the absence of gross negligence or willful misconduct.
- 19.3.2 Except as otherwise provided in Section 19, no Party shall be liable to the other Party for any loss, defect or equipment failure caused by the conduct or actions of the other Party, its agents, servants, contractors or others acting in aid or concert with that Party, except in the case of gross negligence or willful misconduct.
- 19.3.3 In no event shall either Party have any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including but not limited to loss of anticipated profits or revenues or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "***Consequential Damages***"), even if the other Party has been advised of the possibility of such damages.

### 19.4 Intellectual Property

Neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other based on or arising from any claim, demand, or proceeding by any third person alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision or use of any facilities by either Party under this Agreement constitutes direct or contributory infringement, or misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any third party.



**20. Joint Work Product.**

This Agreement is the joint work product of the Parties, has been negotiated by the Parties, and shall be fairly interpreted in accordance with its terms. In the event of any ambiguities, no inferences shall be drawn against either Party.

**21. Multiple Counterparts.**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.

**22. No Third Party Beneficiaries.**

This Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein expressed or implied shall create or be construed to create any third-party beneficiary rights hereunder. Except for provisions herein expressly authorizing a Party to act for another, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party; nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against, in the name of, or on behalf of the other Party, unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

**23. Notices.**

Notices given by one Party to the other Party under this Agreement shall be in writing and shall be: (i) delivered personally; (ii) delivered by express delivery service; (iii) mailed, postage prepaid, certified mail, return receipt, (iv) faxed, or (v) sent by e-mail with electronic proof of receipt, in each case to the following addresses of the Parties:

**To: CLEC**

Julie Laine  
Group Vice President & Chief Counsel,  
Regulatory  
Time Warner Cable  
60 Columbus Circle  
New York, NY 10023  
Tel: 212.364.8482  
Fax: 704.973.6239  
Email: Julie.Laine@twcable.com

**With a copy to:**

Maribeth Bailey  
Time Warner Cable

**To: ILEC**

Tel:  
Fax:  
Email:

**With a copy to:**

Tel:  
Fax:



60 Columbus Circle  
New York, New York 10023  
Tel: 212.364.8440  
Fax: 704.973.6222  
Email: Maribeth.bailey@twcable.com

Email:

or to such other address as either Party shall designate by proper notice. Notices will be deemed given as of the earlier of: (i) the date of actual receipt; (ii) the next business day when notice is sent *via* overnight express mail or personal delivery; or (iii) five (5) days after mailing in the case of certified U.S. mail.

**24. Impairment of Service.**

The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of the other Party pursuant to this Agreement shall not materially interfere with or materially impair service over any facilities of the other Party, its affiliated companies, or its connecting and concurring carriers involved in its services, cause damage to its plant, violate any applicable law or regulation regarding the invasion of privacy of any communications carried over the other Party's facilities or create hazards to the employees of the other Party or to the public.

**25. Change in Law.**

25.1 The Parties enter into this Agreement without prejudice to any positions they have taken previously or may take in the future in any legislative, regulatory, judicial, or other public forum addressing any matters, including matters related specifically to this Agreement, or other types of arrangements prescribed in this Agreement, provided, however, that this Agreement shall remain binding on the Parties. The Parties further acknowledge and agree that by executing this Agreement, neither Party waives any of its rights, remedies, or arguments with respect to any change in law, including its right to seek legal review or a stay pending appeal of such change or its rights under this paragraph.

25.2 The Parties acknowledge that the respective rights and obligations of each Party as set forth in this Agreement are based on the Act and the rules and regulations promulgated thereunder by the FCC and the Commission as of the Effective Date ("**Applicable Rules**"). In the event of (i) any final, effective, unstayed, amendment to the Act, (ii) any effective legislative action that is not stayed or overturned, (iii) any effective, final, non-appealable regulatory or judicial order, rule or regulation, (iv) any final, non-appealable dispute resolution under this Agreement, or (v) any other final, effective, non-appealable legal action purporting to apply the provisions of the Act to the Parties or in which the FCC or the Commission makes a generic determination that is generally applicable to pricing, terms and conditions of this Agreement, any of which establishes additional Applicable Rules or revises, modifies or reverses the Applicable Rules

(individually and collectively "*Amended Rules*"), then either Party may, to the extent permitted or required by the Amended Rules, by providing written notice to the other Party, require that the provisions of this Agreement that are revised, modified or reversed by the Amended Rules be discussed in good faith and this Agreement shall be amended accordingly to reflect the pricing, terms and conditions agreed by the Parties to reflect each such Amended Rule.

- 25.3 Should the Parties be unable to reach agreement with respect to the applicability of such order or the resulting appropriate modifications to this Agreement, either Party may invoke the Section 10 Dispute Resolution provisions of this Agreement, it being the intent of the Parties that this Agreement shall be brought into conformity with the then-current Applicable Rules as determined by the change in law.

**26. Regulatory Approval.**

The Parties understand and agree that this Agreement will be filed with the Commission, and to the extent required by FCC rules may thereafter be filed with the FCC. Each Party covenants and agrees to fully support approval of this Agreement by the Commission. In the event the Commission rejects this Agreement in whole or in part, the Parties agree to meet and discuss in good faith to arrive at a mutually-acceptable modification of the rejected portion(s).

**27. Taxes and Fees.**

Each Party purchasing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or levied against or upon the providing Party when such providing Party is permitted to pass along to the purchasing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be exempt, the purchasing Party shall furnish the providing Party a proper resale or other tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale or other tax exemption. Failure to provide such resale or tax exemption certificate within sixty (60) days of notice of the claimed exemption will result in no exemption being available to the purchasing Party.

**28. Trademarks and Trade Names.**

No patent, copyright, trademark or other proprietary right (the "*Marks*") is licensed, granted, or otherwise transferred by this Agreement. Each Party is strictly prohibited from any use of the other Party's Marks, including, but not limited to, in sales, in marketing or in advertising of telecommunications services. The Marks include those Marks owned directly by a Party or its Affiliate(s) and those Marks that a Party has a legal and valid license to use.



**29. Branding.**

- 29.1 CLEC shall provide the exclusive interface to CLEC subscribers, except as CLEC shall otherwise specify for the reporting of trouble or other matters identified by CLEC for which ILEC may directly communicate with CLEC subscribers. In those instances where CLEC requests that ILEC personnel interface with CLEC subscribers, such ILEC personnel shall inform the CLEC subscribers that they are representing CLEC, or such brand as CLEC may specify.
- 29.2 Other business materials furnished by ILEC to CLEC subscribers shall bear no corporate name, logo, trademark or trade name.
- 29.3 Except as specifically permitted by a Party, in no event shall either Party provide information to the other Party's subscribers about the other Party or the other Party's products or services.
- 29.4 ILEC shall share pertinent details of ILEC's training approaches related to branding with CLEC to be used by ILEC to assure that ILEC meets the branding requirements agreed to by the Parties.
- 29.5 This Section shall not confer on either Party any rights to the service marks, trademarks and/or trade names owned by or used in connection with services by the other Party, except as expressly permitted in writing by the other Party.

**30. Non-Waiver.**

Failure of either Party to insist on the performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

**31. Referenced Documents.**

To the extent a Party uses such materials, and except where such handbooks/documentation/web information (a) conflicts with contract language; (b) adds charges not covered in this Agreement's Pricing Attachment; (c) establishes unreasonable restrictions or demands; or (d) conflicts with applicable law, each Party will use, the other Party's operational handbooks or web-based procedures for interacting with one another (e.g., placing orders, handling maintenance issues, obtaining End-User Customer information). If provisions in or changes to the operational handbooks or web-based procedures of one Party cause significant modifications to the other Party's ("*Disputing Party*") processes and are outside normal industry practice, the Disputing Party may raise the concern with the Party whose procedures have changed. The Parties agree to discuss options for minimizing the impact of the change on the Disputing Party and implementing such options if appropriate. Adherence by a Party to a provision of the other Party's handbooks or procedures shall not constitute a waiver of the right to object to such provision, or to pursue the dispute resolution process regarding such provision.



**32. Responsibility for Third Party Traffic.**

All traffic delivered by one Party (the "*Delivering Party*") to the other Party (the "*Receiving Party*") under this Agreement, including traffic originated by End-User Customers of the Delivering Party or other third persons, shall be deemed traffic of the Delivering Party who shall be responsible for all traffic as if such traffic had been originated by the Delivering Party, including payment of all costs and fees.

**33. Federal Jurisdictional Areas.**

Article 1, Section 8, Clause 17 of the United States Constitution provides the authority to Congress to exercise exclusive jurisdiction over areas and structures used for military purposes (the "*Federal Enclaves*"). Thus, Telecommunications Services to such Federal Enclaves are not subject to the jurisdiction of the Commission. The Parties agree that Telecommunications Services provided within Federal Enclaves are not within the scope of this Agreement. To the extent ILEC has contracts with federal entities that limit or prohibit the ability of CLEC to provide resale or UNEs, such contract will govern Telecommunications Services on such Federal Enclave. If the contract with the federal entity provides for the resale or provision of UNEs to provide service on the Federal Enclave, ILEC will provide CLEC with information regarding the provision of service on the Federal Enclave.

**34. Implementation Plan.**

- 34.1 This Agreement sets forth the overall standards of performance for the services, processes, and systems capabilities that the Parties will provide to each other, and the intervals at which those services, processes and capabilities will be provided. The Parties understand that the arrangements and provision of services described in this Agreement shall require technical and operational coordination between the Parties. Accordingly, the Parties agree to form a team (the "***Implementation Team***") which shall develop and identify those processes, guidelines, specifications, standards and additional terms and conditions necessary to support and satisfy the standards set forth in this Agreement and implement each Party's obligations hereunder.
- 34.2 Dispute Resolution. If the Implementation Team is unable to agree on any of the matters to be included in the Implementation Plan, then either Party may invoke the procedures set forth in Section 10.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year written below.

<p>[ILEC]</p>    <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p><b>Time Warner Cable Information Services (____), LLC</b></p>    <p>By: _____</p> <p>Name: David Flessas</p> <p>Title: SVP, Network Operations &amp; Planning</p> <p>Date: _____</p>
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**GLOSSARY**  
**to**  
**INTERCONNECTION AGREEMENT**

**1. General Rule.**

Special meanings are given to common words in the telecommunications industry, and coined words and acronyms are common in the custom and usage in the industry. Words used in this Agreement are to be understood according to the custom and usage of the telecommunications industry, as an exception to the general rule of contract interpretation that words are to be understood in their ordinary and popular sense. In addition to this rule of interpretation, the following terms used in this Agreement shall have the meanings as specified below:

**2. Definitions.**

**2.1 ACCESS SERVICE REQUEST (ASR).**

An industry standard form, which contains data elements and usage rules used by the Parties to add, establish, change or disconnect services or trunks for the purposes of interconnection.

**2.2 ACT.**

The Communications Act of 1934 (47 U.S.C. §151 et seq.), as from time to time amended (including, without limitation, by the Telecommunications Act of 1996, Public Law 104-104 of the 104th United States Congress effective February 8, 1996), and as further interpreted in the duly authorized and effective rules and regulations of the FCC or the Commission.

**2.3 AFFILIATE.**

Shall have the meaning set forth in the Act.

**2.4 APPLICABLE LAW.**

All effective laws, government regulations and orders, applicable to each Party's performance of its obligations under this Agreement.

**2.5 AUTOMATIC NUMBER IDENTIFICATION (ANI).**

The signaling parameter which refers to the number transmitted through the network identifying the calling number of the calling Party.

**2.6 BILL AND KEEP.**

An arrangement, as described by the Act, under which the Parties believe that traffic exchange will be balanced and therefore agree to recover their costs



associated with the transport and termination of Local Traffic from their own End-User Customer, rather than each other.

2.7 CALLING PARTY NUMBER (CPN).

A Signaling System 7 (SS7) parameter that identifies the calling party's telephone number.

2.8 CENTRAL OFFICE.

A local switching system for connecting lines to lines, lines to trunks, or trunks to trunks for the purpose of originating/terminating calls over the public switched telephone network. A single Central Office may handle several Central Office codes ("NXX"). Sometimes this term is used to refer to a telephone company building in which switching systems and telephone equipment are installed.

2.9 CENTRAL OFFICE SWITCH.

A switch used to provide Telecommunications Services including but not limited to an End Office Switch or a Tandem Switch. A Central Office Switch may also be employed as combination End Office/Tandem Office Switch.

2.10 COMMISSION.

Means the \_\_\_\_\_ Commission.

2.11 COMMON CHANNEL SIGNALING (CCS).

A method of transmitting call set-up and network control data over a digital signaling network separate from the public switched telephone network facilities that carry the actual voice or data content of the call.

2.12 COMPETITIVE LOCAL EXCHANGE CARRIER (CLEC).

Any corporation or other person legally able to provide Local Exchange Service in competition with an ILEC.

2.13 DIGITAL SIGNAL LEVEL 1 (DS1).

The 1.544 Mbps first-level signal in the time-division multiplex hierarchy.

2.14 DIGITAL SIGNAL LEVEL 3 (DS3).

The 44.736 Mbps third-level signal in the time-division multiplex hierarchy.

2.15 DIRECT INTERCONNECTION FACILITIES.

Dedicated one-way or two-way transport facilities installed between CLEC's switch (or its equivalent) and ILEC's switch.

2.16 END OFFICE SWITCH OR END OFFICE.

A switch in which End-User Customer station loops are terminated for connection to trunks. The End-User Customer receives terminating, switching, signaling, transmission, and related functions for a defined geographic area by means of an End Office Switch.

2.17 END-USER CUSTOMER.

The residential or business subscriber that is the ultimate user of Telecommunications Services provided directly or indirectly to such subscriber by either of the Parties or by a customer of one of the Parties.

2.18 EXCHANGE ACCESS.

Exchange Access shall have the meaning set forth in Section 153(20) of the Act.

2.19 EXCHANGE AREA.

Means the geographic area that has been defined by the Commission for the provision of Telephone Exchange Service.

2.20 FCC.

The Federal Communications Commission.

2.21 FCC USF-INTERCARRIER COMPENSATION REFORM ORDER.

Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, adopted by the FCC on October 27, 2011 in Docket Nos. 10-90, 09-51, 07-135, 05-337, 01-92, 96-45, 03-109, 10-208.

2.22 INCUMBENT LOCAL EXCHANGE CARRIER (ILEC).

Has the meaning set forth in 47 U.S.C. § 251(h)

2.23 INFORMATION SERVICE.

The term shall be as defined in the Act. 47 U.S.C. § 153(24).

2.24 INTERCONNECTED VOIP SERVICE TRAFFIC.

Interconnected VoIP Service Traffic is traffic that is provisioned via a service that: (1) enables real-time, two-way voice communications; (2) requires a broadband connection from the user's location; (3) requires Internet protocol-compatible customer premises equipment (CPE); and (4) permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.